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IN THE

SUPREME COURT OF THE UNITED STATES

SPRING TERM, 1979

No. 78-1147

Michael Richard Wilson,
Petitioner.

v.

Board of Governors,
Washington State Bar Association,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of
Washington

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January 14, 1979

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IN THE

SUPREME COURT OF THE UNITED STATES

Spring Term, 1979

No. ____

MICHAEL RICHARD WILSON,
Petitioner.

v.

BOARD OF GOVERNORS,
WASHINGTON STATE BAR ASSOCIATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Washington.

The Petitioner, Michael Richard Wilson, respectfully prays for a writ of certiorari issue to review the opinion and judgement of the Supreme Court of the State of Washington, entered in this proceeding on October 25, 1978.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington (Exhibit A) is set forth in 90 Wn. 2d 649, 585 P. 2d 136. The opinion of the Superior Court, Pierce County, granting respondent summary judgement (Exhibit B) is unreported.

JURISDICTION

The judgement of the Supreme Court of the State of Washington was final on October 25, 1978, and is final by its terms. This petition for certiorari was filed less than 90 days from the aforementioned date. The jurisdiction of this Court is invoked under 28 U.S.C. section 1257 (3).

QUESTIONS PRESENTED

Petitioner, a graduate from Western State University College of Law of San Diego, was denied by respondent the opportunity to sit for the Washington State bar examination. The questions thereby arising are:

1. Whether the denial of the opportunity to take the Washington State bar exam because of the mere fact that an applicant's law school is not approved by the ABA is a denial of "Due Process" and "Equal Protection" under the Fourteenth Amendment.

2. Whether the denial of a hearing by respondent is an infringement of the Fourteenth Amendment which should have been corrected by the Supreme Court of Washington State.

3. Whether graduates of law schools accredited bv organizations other than the ABA should be allowed to show their fitness to practice law, and a denial of this opportunity is a violation of "Equal Protection" and "Due Process" under the Fourteenth Amendment.

4. Whether the decision of the court below that the power to admit attorneys to the Bar is exclusively in the State Supreme Court is believed to be erroneous and contrary to prior decisions of this Court.

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

Constitution of the United States, Article IV, section 4:

"The United States shall guarantee to every State in this Union a republican form of government..."

Constitution of the United States, Amendment XIV, section 1:

". . .nor shall any state deprive any person of life, liberty, or property without due process of law..."

Enabling Act, 25 U.S. Statutes at large, c. 180, section 4, p. 676:

"The constitution shall be republican in form..."

Article II, Section 1, Washington State Constitution:

"The legislative authority of the State of Washington shall be vested in the legislature..."

STATEMENT OF THE CASE

This petition arises from the denial of the Board of Governors of the State Bar Association of Washington to allow petitioner, Michael Richard Wilson, to sit for the February, 1976, Bar Examination of the State of Washington. The basic facts, which are not in dispute, are as follows: On December 2, 1975, petitioner submitted application to the Washington State Bar Association to sit for the February, 1978, Bar Examination of that state. Petitioner submitted the application as being qualified under the Admission to Practice Rules, as a general applicant. Also, petitioner submitted application for registration for the law clerkship program, together with a request for full "advance standing," as provided under "Admission to Practice Rules, Rule 2d (5), 65 WN 2d XXXIX (1965)". Petitioner is a graduate of Western State University College of Law of San Diego (Western State) where he received his Juris Doctorate degree on December 21, 1975. Western State is and was accredited by the Committee of Bar Examiners of the State Bar of California, and is accredited by the Western Association of Schools and Colleges.

Petitioner's academic background includes a semester of foreign study on World Campus Afloat, and the receipt of a Bachelors of Art Degree in Political Science from Washington State University in 1972. Petitioner's legal training has included five months of employment as a research analyst for U.S. Financial; five months as a law clerk for the San Diego District Attorney, Fraud Division; one and one-half years as an investigator and legal consultant for the Washington State Attorney General's office, Consumer Protection Division; and, currently as a legislative administrator and consultant for the Department of General Administration, State of Washington.

On January 20, 1976, petitioner was informed by respondent that his application to take the Washington State Bar Examination was not approved. The nonapproval was issued because the law school from which petitioner graduated was not an approved law school by the Board of Governors of the State of Washington. Petitioner's second application as a registered law clerk was accepted on the basis of granting one year "advance standing."

Petitioner was not permitted to be present at the hearing before respondent on his bar application, to cross examine the members of the Board of Governors, nor to orally present evidence before the Board of Governors to show his legal educational qualifications. Although petitioner did not attend an ABA approved law school, petitioner desired a hearing before respondent to refute any evidence presented which indicated he was not educationally qualified and to present his own evidence to demonstrate that Western State's accreditation by the California Bar Association either met or exceeded the standards of the American Bar Association.

On February 20, 1976, Western State's Assistant Dean, John W. Black, sent respondent an invitation to visit, inspect, and evaluate Western State's academic program and facilities at the school's expense. Respondent refused the invitation.

On the 25th of October, 1978, the Supreme Court of Washington's order, sustaining the Respondent's Petition for Summary Judgement, became effective. The court dealt only briefly with the question of "due process" and concluded that it could not find error in the Superior Court's decision.

The court refrained from any commitment regarding the equal protection issue but instead outlined what it conceived to be the issue before it. It declared that the case of Konnisberg vs. The State Bar of California, 353 U.S. 252, 1 L. Ed. 2d 810, 77 Sup. Ct. 722 (1957), and Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L. Ed. 2d 796, 77 Sup. Ct. 752 (1957) were not on point because they only involved cases "regarding moral character."

On the same rationale, the court disposed of what can be described as difficult constitutional questions, which might have arisen if the Superior Court's decision were reversed. The question of due process was resolved by the Superior Court solely with inference and comment that Western State was not on the approved law school list and, therefore, the petitioner was intellectually unfit and unprepared to take the Washington State Bar Exam.

REASONS FOR GRANTING THE WRIT

The decision below should be reversed because it erroneously interprets the due process clause of the United States Constitution and the equal protection guarantee so as to disrupt the orderly and fair procedure to admit attorneys to practice in the State of Washington.

Either the decision below is in conflict with the decision of this Court in Schware vs. Board of Bar Examiners, supra, or if it is not in conflict, the issue of far reaching importance left undecided in this case must be faced. In any event, this Court should grant review.

ARGUMENT 1

THE DENIAL OF THE OPPORTUNITY TO TAKE THE WASHINGTON BAR EXAM BECAUSE OF THE MERE FACT THAT AN APPLICANT'S LAW SCHOOL IS NOT APPROVED BY THE ABA IS A DENIAL OF "DUE PROCESS," AND "EQUAL PROTECTION" OF THE FOURTEENTH AMENDMENT.

Notwithstanding a state supreme court's authority over bar admissions, there is question that such court is bound by the "due process" and "equal protection" guarantees of the Fourteenth Amendment to the United States Constitution in the exercise of such power. The leading case in this area is Schware v. Board of Bar Examiners, supra, which struck down New Mexico's refusal to admit petitioner to practice on the grounds he had not demonstrated "good moral character."

In reaching its decision in Schware, the court's majority noted that,

> "We need not enter into a discussion whether the practice of law is a right or privilege. Regardless of how the state's grant permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the state's grace." Supra at 239,

and rested its decision on the basis that petitioner's exclusion from the practice of law violated "due process" since, upon the record, the New Mexico Supreme Court could not reasonably find that he had not shown good moral character. In a separate concurring opinion, Mr. Justice Frankfurter stated that "refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the due process clause." Supra at 249.

In light of Schware, the basic constitutional issue posed by the application of petitioner is this: Is it reasonable to deny the opportunity to take the bar exam to an individual who has completed law school and has obtained his Juris Doctorate Degree, and who otherwise meets all the qualifications for admission to the bar of Washington State, simply and solely because his law school, while meeting the accreditation standards of sister states, was not accredited by the ABA at the time of his graduation? In other words, may the court, consistent with the "due process" and "equal protection" requirements maintained in Schware, conclude that the legal educational standards set by the particular private professional association are somehow superior to those set by a public agency of another state, and that anyone whose law school did not meet those private standards, no matter how well qualified he might be in other respects, is ipso facto unfit to practice law in Washington State?

Petitioner suggests a strong argument can be made that the answer to these questions is in the negative--at least in the absence of some attempt by the court to articulate and justify why the private ABA standards are the only ones acceptable.

ARGUMENT 2

THE DENIAL OF A HEARING BY RESPONDENT IS AN INFRINGEMENT OF THE FOURTEENTH AMENDMENT, WHICH SHOULD HAVE BEEN CORRECTED BY THE SUPREME COURT OF WASHINGTON STATE.

The court below determined that petitioner was not entitled to a hearing before respondent, Board of Governors, since there were no factual disputes and since petitioner was afforded an opportunity to submit to respondent documentary material indicative of his legal work. Petitioner contends that the Washington State Supreme Court was in error in ruling that there were no disputed facts in this case. Petitioner did, in fact, dispute the fact that he is not educationally qualified to sit for the bar examination--the central issue of the case--because he did not attend a law school approved by the American Bar Association. This Court is not bound by findings of state courts and may determine for itself the facts of a case upon which asserted federal rights depend, Southern Pacific Co. v. State of Arizona ex. rel. Sullivan, 325 U.S. 761, 89 L. Ed. 1915, 65 Sup. Ct. 1515 (1945) and thus, may rule that there were in fact factual disputes in this case.

One of the most basic rights individuals are entitled to under the United States Constitution is the right to a fair hearing. This Court held in the cases of Konisberg v. State Bar of California, 353 U.S. 252, 1 L. Ed. 2d 810, 77 Sup. Ct. 722 (1957), and Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L. Ed. 2d 796, 77 Sup. Ct. 752 (1957) that a person who seeks to enter upon the occupation of an attorney comes "clothed with the protection of the Fourteenth Amendment." See also Feldman v. State Board of Law Examiners, 438 F. 2d 699 (Ark. 1971).

The ruling of the court below that petitioner should not be granted a hearing to establish that Western State is as sound a law school as one which is ABA approved is totally contrary to any measure of justice and squarely conflicts with this Court's prior rulings. The basic issue before respondent, and primary responsibility of respondent, is to evaluate and determine the fitness of petitioner, which entails analyzing and determining the soundness of petitioner's law school. If respondent rules that Western State is not sound because it is not an ABA approved law school, petitioner is then entitled to a hearing before respondent to present evidence to prove that such law school is in fact a sound academic institution.

ARGUMENT 3

GRADUATES OF SCHOOLS ACCREDITED BY OTHER ORGANIZATIONS THAN THE ABA SHOULD BE ALLOWED TO SHOW THEIR FITNESS TO PRACTICE LAW, AND A DENIAL OF THIS OPPORTUNITY IS A VIOLATION OF "EQUAL PROTECTION" AND "DUE PROCESS" OF THE FOURTEENTH AMENDMENT.

Petitioner, like other applicants for admission to the bar as an attorney, is entitled to both substantive and procedural due process and equal protection, Feldman v. State Board of Bar Examiners, supra. The court below in ruling that respondent's policy of recognizing ABA approved law schools may very well be justified and reasonable, but for respondent not to evaluate petitioner's legal qualifications simply because he did not acquire his juris doctorate degree from an ABA approved law school is manifestly unfair, arbitrary, or capricious.

No state may arbitrarily refuse admission to practice law, Cohen v. Hurley, 366 U.S. 117, 6 L. Ed. 2d 156, 81 Sup. Ct. 954 (1961). An administrative decision is arbitrary or capricious, so as to violate the Due Process Clase, when it is not supported by evidence or where there is no reasonable justification for the decision, Canty v. Board of Education, City of New York, 312 F. 254 (N.Y. 1970).

The mere fact of nonapproval of Western State by the American Bar Association gives no evidence of petitioner's unfitness to write the Washington State bar examination. Respondent, a state agency delegated with the administrative responsibility and authority to approve law schools and applicants to the bar, cannot exclude a person from the practice of law in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment, Schware v. Board of Examiners, supra. See also Dent v. West Virginia, 129 U.S. 114, 32 L. Ed. 623, 9 Sup. Ct. 231 (1888); cf. Slochower v. Board of Education, 350 U.S. 551, 100 L. Ed. 692, 76 Sup. Ct. 637 (1955); Wieman v. Updegraff, 344 U.S. 183, 97 L. Ed. 216, 73 Sup. Ct. 215 (1952). Petitioner asserts that respondent's cursory review of petitioner's application does not satisfy their responsibility.

Graduates of law schools not approved by the ABA but approved by other accrediting organizations, specifically the California State Bar Examiners and the Western Association of Schools and Colleges, may also be fit to practice law in the State of Washington and, justifiably, should be given the opportunity to prove their fitness by being permitted to take the bar examination. Recognizing only those graduates from ABA approved law schools, while totally disregarding the educational qualification of graduates from law schools accredited by other law school accrediting organizations and failing to evaluate the soundness of such legal institutions, strikes a heavy blow at the foundation of the due process principle. Respondent's actions constitute a failure to observe fundamental fairness essential to the very concept of justice. Linden v. Dickson, 287 F. 2d 55 (Cal. 1961).

Individuals are admitted to the legal profession only upon satisfactory evidence that they possess fair private character and sufficient legal learning to conduct causes in court for suitors, Ex parte Robinson, 19 Wall. 512, 22 L. Ed. 205 (1873). It has been well established that the practice of law is not a matter of grace or favor, but of right for one who is qualified by his learning and his moral character, Ex parte Garland, 4 Wall. 333, 18 L. Ed. 366 (1866); Baird v. State Bar of Arizona, 401 U.S. 1, 27 L. Ed. 2d 639, 91 Sup. Ct. 202 (1971). However, even though it has been confirmed that the taking of a state bar examination and subsequent practicing of law is a matter of right to the qualified, the court in Schware v. Board of Bar Examiners, supra., was quick to point out that there is no need to enter into a discussion of whether the practice of law is a "right" or "privilege", for "regardless of how the state's grant of permission to engage in this occupation is characterized, it is sufficient to say a person cannot be prevented from practicing except for valid reasons."

Petitioner believes the court below overlooked petitioner's argument that respondent, the organized bar of the State of Washington, in refusing to properly evalute petitioner, has acted in such a manifestly unfair, arbitrary, or capricious manner because of their philosophical and/or pecuniary bias or prejudice against petitioner's law school and petitioner. This case closely resembles the philosophical bias evident in the case of Berger v. U.S., 255 U.S. 22, 65 L. Ed. 481, 41 Sup. Ct. 230 (1921) where the court found prejudice against a class of which defendents were members and, consequently, showed prejudice against the defendents themselves.

ARGUMENT 4

THE DECISION OF THE COURT BELOW THAT THE POWER TO ADMIT ATTORNEYS TO THE BAR IS EXCLUSIVELY IN THE STATE SUPREME COURT IS BELIEVED TO BE ERRONEOUS AND CONTRARY TO PRIOR DECISIONS OF THIS COURT.

While the court below did not address specifically the issue of respondent's failure to comply with statutory provisions of the "State Bar Act," Chapter 2.48 RCW, its decision clearly established that the state legislature has no jurisdiction in adopting procedural regulations relative to the admittance of attorneys to the state bar. The legislature of the State of Washington in exercising its legislative function as provided under the Constitution of the State of Washington, Article II, Section 1, enacted RCW 2.48.060, which provides in part that respondent shall "appoint boards or committees to examine applicants for admission." Respondent has failed to comply with state statutes in the area of admissions to the bar, since all ultimate authority resides in the state supreme court and acts "independent of legislative direction." Respondent cites the case of In re Schatz, 80 Wn. 2d 604, 607; 497 P. 2d 153 (1972) in support of its position. Consequently, respondent has functioned independent of the legislative mandate at the behest of the state supreme court.

Article IV, Section 4, of the United States Constitution guarantees to every state in the union a republican form of government. Congress, in 1889, set forth in the "Enabling Act," 25 U.S. Statutes at large, c. 180, p. 676, section 4, that the Constitution of the State of Washington shall also be republican in form. The framers of the Washington State Constitution complied by vesting the legislative authority within the body of the Legislature. This form of government gives to the poeple the authority to "choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves," In re Duncan, 139 U.S. 449, 461, 35 L. Ed. 219, 224, 11 Sup. Ct. 573 (1891).

The Washington State Legislature in 1933 enacted the "State Bar Act," wherein they created the Washington State Bar Association and the Board of Governors. The legislature set forth procedural steps for respondent to follow in the process of admission of attorneys in the state. Although the legislature does not have the authority to dictate the admission of attorneys to the bar, since such function has been delegated to respondent subject to the approval of the state supreme court, it is vested with the authority to enact laws to protect the interest of the public by assuring that the admission of attorneys in the State of Washington is procedurally properly administered. This Court has ruled in the case of Ex parte Garland, supra., that a state legislature has the right to prescribe qualifications for the admission of attorneys, to which an applicant or attorney must conform, as a prerequisite to his admission. Furthermore,

the Legislature may prescribe reasonable rules and regulations for admission to the state bar which will be followed by the courts, Keeley v. Evans, 271 F. 520 (D.C., Or. 1921), appeal dismissed 257 U.S. 667, 66 L. Ed. 426, 42 Sup. Ct. 184. See also In re Anastaplo, 366 U.S. 82, 6 L. Ed. 2d 135, 81 Sup. Ct. 978 (1961); Yeiser v. Dysart, 267 U.S. 540 69 L. Ed. 775, 45 Sup. Ct. 399 (1925); Virgin Islands Bar Association v. Dench, 124 F. Supp, 257 (V.I. 1953); see discussion on power of legislature respecting admission to bar, 144 ALR 150.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael R. Wilson
In Propria Persona

EXHIBIT "A"

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

MICHAEL RICHARD WILSON, Petitioner,	)	No. 44951
v.	)	En Banc
BOARD OF GOVERNORS, WASHINGTON STATE BAR ASSOCIATION, Respondent.	)	Filed Oct. 5 1978

This is an application by Michael Richard Wilson (petitioner) for an order to require the Board of Governors of the Washington State Bar Association (respondent) to examine him as to his qualifications to practice law; or, in the alternative, to grant him 4 years advanced standing in the clerkship program and permit him to take the Washington State Bar Examination.

Petitioner attended and graduated from Western State University College of Law (a

proprietary school), San Diego, California (Western). It is accredited by the California Committee of Bar Examiners, but it has not been approved by the American Bar Association (ABA). Washington Admission to Practice Rules (APR) require that in order to sit for this state's bar examination, applicants must be graduates of an approved law school. Respondent has for some time maintained a policy whereby it defines an approved law school as one which has been approved by the ABA. If an applicant has not graduated from an approved law school, the Admission to Practice Rules provide that one may gain permission to sit for the bar examination by completing a 4-year clerkship under the supervision of a member of the Washington State Bar.

Petitioner was informed of these rules some time prior to his graduation from Western. He was aware that Western was not an ABA-approved law school and, therefore, not

an approved law school within the meaning of APR 2(A) and (B).[1] Nonetheless, on December 2, 1975, he filed an application for admission by examination to the Washington State Bar Association. In addition, he filed a registration form and request for 4 years advanced standing in the clerkship program. He based his request for advanced standing not upon completion of a supervised clerkship, but rather upon his graduation from Western.

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[1] "A. Definitions

"A 'general applicant' means either (1) a graduate of an approved law school who does not qualify as an attorney applicant under Rule 3, or (2) a registered law clerk who has satisfactorily completed the course of study prescribed by these Rules.

"An 'approved law school' means a law school approved by the board of governors. The board of governors shall keep a list of approved law schools on file with the State Bar Association and the Clerk of the Supreme Court." APR 2(A)

"B. Qualifications

"A general applicant, in order to be permitted to take the bar examination, must

"(1) present satisfactory proof of either (a) graduation from an approved law school, or (b) satisfactory completion of the course of study prescribed for a registered law clerk by these Rules." APR 2(B)(1)

Respondent considered petitioner's application which evidenced his graduation from Western. Pursuant to APR 2(A) and (B), it denied him permission to sit for the bar examination.

Respondent then considered petitioner's request for advanced standing in the clerkship program. It reviewed petitioner's law school record and a sample of his written legal work. Acting pursuant to APR 2(D)(5), respondent granted petitioner 1 year advanced standing.[2] Petitioner was thus required to complete three additional years in a supervised clerkship program in order to gain permission to take the bar examination.

Being dissatisfied, petitioner filed a petition seeking to compel respondent to

[2] "5. Advanced Standing--Special Students
"A registered law clerk who has attended either an approved or a non-approved law school, may, in the discretion of the board, receive credit for work done and obtain advanced standing. In no event will credit be given for fractional parts of semesters or terms, or for correspondence school work." APR 2(D)(5).

allow him to take the bar exam. He challenged the constitutionality of respondent's actions on due process grounds. Petitioner also contended he was entitled to a hearing under the provisions of the Administrative Procedures Act, and that certain of respondent's actions were arbitrary and capricious. The petition was first heard in the Superior Court for Pierce County. That court disagreed with petitioner and dismissed his petition. Petitioner then was granted review by this court and renewed each of his contentions.

First, petitioner argues that the substance of APR 2(A) and (B) is arbitrary, capricious, and therefore unreasonable. We disagree.

It is not arbitrary to enact a rule limiting permission totake the bar examination to a certain class of persons if the chosen limitation is reasonably related to a legitimate objective, such as fitness to

practice law. In re Schatz, 80 Wn.2d 604, 497 P.2d 153 (1972); Hackin v. Lockwood, 361 F.2d 499 (9th Cir. 1966); Rosenthal v. State Bar Examining Comm., 116 Conn. 409, 165 A. 211, 87 A.L.R., 991 (1933). We believe APR 2(A) and (B), and respondent's policy with respect thereto, which, in effect, require that applicants for admission to Washington's bar must have graduated from an ABA-approved law school, are reasonable. They are a means of assuring that applicants have a legal education assuring their competency to be allowed to hold themselves out to the public as a lawyer.

The American Bar Association maintains objective and evaluative standards for educational curriculum, faculty competence, faculty wages, admission standards, library materials, library personnel, financial aid and physical plant facilities. See Approval of Law Schools, American Bar Association Standards and Rules of Procedure

(1973--as amended 1977). These standards are an appropriate and effective means of measuring the quality of a law school. For many years we have sanctioned reliance upon them and upon the expertise which the American Bar Association has developed in their application. Our reliance clearly has not been misplaced. Various surveys have pointed out a high correlation between graduation from ABA-approved law schools and success in bar exams. See Bard & Bamford, The Bar: Professional Association or Medieval Guild?, 19 Cath. U.L. Rev. 393, 398-9 (1970). The statistics justify respondent's policy of defining an approved law school as one with ABA approval.

Administrative considerations also justify respondent's policy. We have stated that

> (r)ules for admission to the bar are, of course, general in their specifications. They apply to classes of applicants and are drawn to meet normal conditions. They cannot very well be tailored to meet the special

> merits of individuals or of individual law schools. To require the Board of Governors to look into the individual qualifications and standards or every nonaccredited law school whenever a graduate from that school applies to take the bar examination, would be to impose upon the board an unreasonable burden. The policy of the board sets forth a condition precedent to take the bar examination in this state and it applies to all general applicants who are not otherwise qualified under the Admission to Practice Rules. It is correlative and explicit with the ultimate purpose of all regulations for the admission of attorneys to assure the courts the assistance of advocates of ability, learning, and sound character and to protect the public from incompetent and dishonest practitioners. The policy is a valid and reasonable exercise of the discretion of the Board of Governors as heretofore directed and approved by this court.

In re Schatz, supra at 609-10.

Petitioner has not demonstrated that our previous and long-standing approval of respondent's policy has lost either its relevancy to a graduate's competence to practice law or its administrative benefits. It simply cannot be said that requiring

graduation from an approved law school, i.e., one approved by the ABA, is an unreasonable means of assuring that certain applicants for admission to the bar have an adequate legal education. Accordingly, we reaffirm the holding of In re Schatz, supra.

Regardless of the substantive validity of respondent's policy, petitioner contends he was deprived of adequate notice of which, if any, law schools were in fact approved by respondent. This procedural due process argument is without merit.

APR 2(A) expressly provides respondent shall keep a list of approved law schools on file with the Clerk of the Supreme Court. Respondent has consistently complied with this rule. A list of its approved law schools was on file with the Clerk of this court at the time petitioner inquired about admission to the bar. Western's name is conspicuously absent from this list. Although petitioner may have received some

misinformation from respondent regarding its practices of approving law schools, he admits he was given a copy of APR 2(A), which specifies that the list of approved law schools is on file with this court. In addition, he personally received a copy of the list. Petitioner does not deny that at the time he applied for permission to take the bar examination he was fully aware Western was not an approved law school. Clearly, he had adequate notice.

Petitioner further contends he was entitled to a hearing at the time respondent acted upon his application for permission to take the bar examination. It is his argument that his right to a hearing is firmly established by numerous cases. He directs our attention to, among others, Konigsberg v. State Bar of California, 353 U.S. 252, 1 L. Ed. 2d 810, 77 S. Ct. 722 (1957); Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L. Ed. 2d 796,

77 S. Ct. 752 (1957); Hallinan v. Committee of Bar Examiners, 65 Cal. 2d 447, 421 P.2d 76 (1966).

We have examined these cases, as well as others petitioner relies upon, and conclude they are clearly distinguishable. In each of the cases petitioner cites, a hearing was required in order to settle a factual dispute or to allow applicants to refute negative inferences regarding moral character.

Respondent denied petitioner's application because it demonstrated on its face that he graduated from a law school lacking ABA approval and consequently respondent's approval. In contrast to the cases relied upon by petitioner, in this case there exists no factual dispute, since the only material fact--lack of graduation from an ABA-approved law school--is admitted. Where no dispute exists regarding the only material fact, an adversary hearing involving evidence, cross-examination, etc.,

is not required. See Federal Power Comm'n v. Texaco, Inc., 377 U.S. 33, 12 L. Ed. 2d 112, 84 S. Ct. 1105 (1964); United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971). Accordingly, we reject petitioner's contention on this matter.

We also reject the petitioner's argument that he must be granted a hearing to establish that Western is as sound a law school as one which is in fact ABA-approved. As we have stated, the policy of requiring ABA approval is a reasonable means of assuring quality legal education and administrative efficiency. Petitioner, having failed to demonstrate that this requirement is somehow unreasonable, cannot sustain his plea for a case-by-case determination of the individual merits of non-approved law schools. In re Schatz, supra.

We next address petitioner's contentions that he had inadequate notice of the standards utilized for awarding advanced

standing and that a hearing on this matter was required. These contentions may be answered by noting APR 2(D)(5), a copy of which petitioner admits receiving, states that advanced standing is to be granted based upon work done. The granting of advanced standing is a matter firmly committed to respondent's discretion. APR 2(D)(5). The subjective merits of Western, which petitioner evidently seeks to present at a hearing, are not material under the rule's express terms.

Due process requires individuals be given notice and the opportunity to be heard in a proceeding adapted to the nature of the case. In re Hendrickson, 12 Wn.2d 600, 123 P.2d 322 (1942).

Petitioner was advised of the criteria set forth in APR 2(D)(5). He thus must have been aware that respondent's action in this matter was discretionary and based solely on the work he has done. Petitioner

was afforded an opportunity to submit to respondent extensive documentary material indicative of legal work. The record reflects respondent, upon receipt of this material, reviewed and considered it thoroughly. Thus, respondent conscientiously exercised the discretion which it is granted by APR 2(D)(5). We conclude both APR 2(D)(5) and the method respondent utilized for reviewing petitioner's work and granting credit were sufficient to assure petitioner due process.

Petitioner next contends respondent's action granting him only 1 year advanced standing was arbitrary and capricious. As we have stated, the terms of APR 2(D)(5), under which advanced standing is authorized, firmly commits the matter to respondent's discretion. Where action is discretionary, a court will not set it aside in the absence of a clear showing of abuse of discretion. Marketing Unlimited, Inc. v.

Jefferson Chemical Co., 90 Wn.2d , P.2d (1978); State v. O'Connell, 84 Wn.2d 602, 528 P.2d 988 (1974). A clear abuse of discretion may be shown by demonstrating the discretion was exercised in a manner which was manifestly unreasonable or exercised on untenable grounds or for untenable reasons. Marketing Unlimited, Inc. v. Jefferson Chemical Co., supra.

We, as did the Board of Governors, have carefully perused petitioner's record, including a transcript of his law school grades. Based upon his record, it simply cannot be said that respondent manifestly acted in an unreasonable manner or upon untenable grounds when it granted only 1 year advanced standing in the law clerk program. Accordingly, we find no abuse of discretion in respondent's action.

Finally, we turn to the question of the applicability of the Administrative Procedures Act, RCW 34.04. It is petitioner's argument RCW 34.04 entitles him

to a hearing. This argument is meritless. Admission to the bar is a judicial function, and the power to admit attorneys to the bar is exclusively in the Supreme Court. In re Schatz, 80 Wn.2d 604, 497 P.2d 153 (1972); In re Chi-Dooh Li, 79 Wn.2d 561, 488 P.2d 259 (1971). Respondent acts as an arm of the court in administering the applications process. In that capacity it is clearly within the judicial branch. By its own terms, RCW 34.04 is expressly inapplicable to any board within the judicial branch. RCW 34.04.010(1). Thus, that statute is inapplicable to respondent's admissions process, and it affords petitioner no statutory right to a hearing.

The judgment of the trial court is affirmed.

We concur:

EXHIBIT "B"

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MICHAEL R. WILSON, Plaintiff vs BOARD OF GOVERNORS, WASHINGTON STATE BAR ASSOCIATION, Defendants.	)	No. 252 422

ORAL DECISION - May 13, 1977

BEFORE: THE HONORABLE THOMAS A. SWAYZE, JR.

APPEARANCES:

MICHAEL R. WILSON for Plaintiff
Pro se

ROBERT T. FARRELL for Defendant
State Bar Counsel

DATE: May 13, 1977

THE COURT: Thank you. I certainly don't blame you for bringing the lawsuit for those various reasons.

You ask the Court to excuse your somewhat emotional involvement in the matter, and I will excuse that, and I understand that. Of course, that's one reason why lawyers always tell people, "Don't represent yourself; do it through a lawyer." But I'm not criticizing you for that, because I'm sure there are valid reasons for it.

MR. WILSON: If I may make one comment: I have prepared my entire case by myself, with a little assistance from outside help. I have had some assistance in an advisory manner. I made the determination to present this case myself because I feel that I have the capabilities of doing such.

THE COURT: I think you do too, and you have done so very well. I think it is

appropriate that the matter be heard in the courts of this state, and I think this court does have jurisdiction. I think it has jurisdiction over the parties. I think it has jurisdiction to hear the dispute, as does the Supreme Court, either originally, concurrently, or eventually from the decision of this court.

There are some basic considerations here. Let's find out what the real issues of the case are. Petitioner first cites cases in which he claims the practice of law is a matter of right to a person who is qualified morally and educationally. That is true. What that means, is that what those qualifications are is subject to a determination by rule or by decision of some agency. Opposed to that concept we have the matter of whether a decision of that agency is then arbitrary or capricious. In other words: were they made

without any valid reasons therefor? Based upon the evidence which is in this file, and the arguments presented to me, it cannot be said that the decision in your particular case was made without any reason whatsoever. Because there were reasons, I cannot find that the decision in your matter was an arbitrary and capricious one.

Then we get to the matter of whether those reasons were good ones. Assuming that I have jurisdiction, as I claim that I do, what, then, is the role of the court taking jurisdiction of this matter in its judicial capacity as opposed to the role of the Supreme Court or the Board of Governors, or the Legislature of the State of Washington in its legislative and administrative capacity? You've got to realize that the Supreme Court also has some legislative responsibilities delegated to it by the Washington State Legislature, the same as the Board of Governors has had delegated

to it some legislative responsibilities in this area.

I don't see any real conflict between Mr. Friar's affidavit which says, "Oh, we don't have any discretion; we're subject to just the rules of the Supreme Court." There isn't any real difference between that and the statute of the legislature which delegates this legislative responsibility to the Board of Governors, subject to the power of the State Supreme Court to set the rules and the policies also within which the Board of Governors must live, and against whose policies they cannot go.

Consequently, what Mr. Friar is saying is, "All right, once the Supreme Court has adopted some rules for us to live with pertaining to admission for the practice of law in this state, we cannot do anything within our discretion which derrogates from those particular rules." So when you're talking about these policy considerations

of: are you then qualified morally--and nobody has questioned that here anywhere--or educationally qualified to be allowed to practice law, or to be allowed to take the bar examination of this state, which would authorize you to practice law, the question becomes whether either the Superior Court or the Supreme Court, in its judicial capacity as opposed to its legislative or administrative policy-making capacity, should make that determination. To say that we should make, in your case or in any other case, an independent determination--as you have sought--that educationally you are qualified because Western Reserve University should be--

MR. WILSON: State University.

THE COURT: -- Western State University should be held to be a qualified law school, I think is just totally outside the realm of the judicial decision-making process,

either at the Superior Court level or the Supreme Court level. Because, you see, turn that around: If I should say, "Yes, I have jurisdiction to make an independent determination of whether Western State should be a qualified and approved law school," then we open up this court to a claim of somebody from Georgetown or Harvard, or whatever, who maybe failed the bar exam, to come in and say, "Disqualify everyone who took the bar exam who got a degree from the University of Washington, or the University of Puget Sound, because I don't think they should be accredited." And to say that this court has the power to do that sort of thing of course takes it outside of the context of anything that is logical. Yet, to turn that around to say that the court should have the power to accredit, when it doesn't have the power to not accredit--which it doesn't-- You see, what I'm saying is that

those are the very types of decisions that have got to be left to the authority of those persons given that authority by the Legislature, and that's the Board of Governors of the Bar Association, subject to the rule-making powers of the State Supreme Court.

If it can be shown that their decision is arbitrary or capricious, or done in direct derrogation of any of the rules promulgated by the Supreme Court, which I cannot find from what has been presented to me, or if there's been some constitutional right violated, then the courts could intervene judicially.

The one urged here is violation of due process. Violation of due process assumes that you have a right which is being deprived of you without due process of law. There are many, many cases, and cases cited by the Board of Governors which indicate that once a right has been granted, it

cannot be deprived without due process of law. But you don't have that right, you see, until you once pass the test, once determined that you are qualified. Until you pass all of those qualification steps, which are determined by the procedures, then you do not have right to all of these notice procedures and all of those things which you are seeking. In other words, the conferment of a license, whether it be to practice medicine, or to practice law, or to drive an automobile, is not necessarily a right per se; it is a privilege conferred, once you meet the qualifications, then you have that right, which brings you within the constitutional protection.

Consequently, I cannot find that there are any violations of any due process steps up to this point in time with regard to the consideration of your particular case by the Board of Governors, acting within the

rules of the State Supreme Court, as promulgated by them. I will grant the Board of Governors of the Washington State Bar Association's motion for Summary Judgment.

I might add that in the preparation of Findings of Fact in this particular matter, and in making my decision, which may therefore be reflected in the Findings of Fact, that I have conceded and given to you the benefit of the assumption of those matters which you have alleged here as to being disputed facts, so that with regard to those which you set forth in your presentation, and in your brief, with regard to those facts as disputed, they are either not material within the context of my decision, or if material, those facts may be conceded to be as you presented them to me.

MR. WILSON: If I may ask a question. You have made a statement that -- if I may

paraphrase you -- that you determined that the Board of Governor's actions, because they made a decision, was not arbitrary and capricious--the fact that they made the decision.

THE COURT: Your paraphrasing is incorrect. The fact that they made a decision which was based upon valid reason, was the basis for my findings that it was not arbitrary and capricious.

MR. WILSON: The fact that --

THE COURT: Your disagreement is with the validity of those reasons, which I can see.

MR. WILSON: The fact that -- getting into -- I assume that this is getting into the validity that they granted me only one year advance standing, that those reasons were not appropriate or proper--the fact that the reasons were not based on facts, but were based on bias and prejudice. You're stating that they are not arbitrary and ca-

pricious, and I'm contending the fact, and my evidence shows, testimony would show, that the decision they made, the fact that they are all members of the schools that have been approved by the American Bar Association, and/or the conflicts -- the fact that Mr. Edward Friar relates almost all of the information of the Board of Governors--

THE COURTS: Well, don't repeat your argument once again, because I will be unable to concur in any of your statements, having disagreed with some of them that you have made in that summary. Consequently what you want to ask me is if this is what I based my decision on, and I obviously cannot, because I already disagree with a couple of things you've said.

MR. WILSON: I think probably part of the problem is that I don't understand what you've said. I honestly do not understand what you've said.

THE COURT: I can understand why you don't understand what I've said, and --

MR. WILSON: Would you comment on that?

THE COURT: --and part of that is based upon, I'm sure, your own evaluation of the worth of your case, and your own personal involvement in it, and therefore some inability to see those matters which I have to see, and that's a proper separation between legislative, judicial, and executive decisions within the total realm of the government process.

MR. WILSON: And that I do not have a right, because I am not -- I do not have the background to take the bar examination, and therefore continue on to practice law?

THE COURT: Oh, I didn't say that.

MR. WILSON: You said that I have not reached the point to have the right yet, because I have not been given the opportunity to take the bar examination. What's the purpose of having the bar examination?

THE COURT: That's not at issue here.

MR. WILSON: Well, what you've said, you make it an issue at this point, because what you've said is that I do not have a right because I have not reached that plateau yet.

THE COURT: You don't have the right because you haven't been given it by the Board of Governors of the Washington State Bar Association. You can't dispute that, can you?

MR. WILSON: The fact is that the right is given to me because I have the qualifications. And there's no record showing that I do not have the qualifications. That's not disputed.

THE COURT: That's the bone of the contention of the case.

MR. WILSON: That's right. And that is the reason why it should go to trial. That's one of the contentions that has not been disputed.

THE COURT: Oh, I regard that as substantially in dispute. If that wasn't disputed, you would have been allowed to take the bar examination.

MR. WILSON: There is nothing in the record showing it is disputed.

THE COURT: The Court will be at recess.

(MATTER CONCLUDED)

Supreme Court, U. S.
FILED
FEB 15 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SPRING TERM 1979

NO. 78-1147

MICHAEL RICHARD WILSON,

Petitioner,

vs.

BOARD OF GOVERNORS,
WASHINGTON STATE BAR ASSOCIATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Robert T. Farrell
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Association
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Counsel for respondent

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RELEVANT COURT RULES

WASHINGTON ADMISSION TO PRACTICE RULES, (APR), Rule 2:

A. Definitions

A "general applicant" means either (1) a graduate of an approved law school who does not qualify as an attorney applicant under Rule 3, or (2) a registered law clerk who has satisfactorily completed the course of study prescribed by these Rules.

An "approved law school" means a law school approved by the board of governors. The board of governors shall keep a list of approved law schools on file with the State Bar Association and the Clerk of the Supreme Court.

B. Qualifications

A general applicant, in order to be permitted to take the bar examination, must

1. present satisfactory proof of either (1) graduation from an approved law school, or (b) satisfactory completion of the course of study prescribed for a registered law clerk by these Rules... .

QUESTION PRESENTED FOR REVIEW

Were the constitutional rights of Michael R. Wilson violated when, as a graduate of a law school not approved by the American Bar Association, he was denied permission to take the Washington State bar examination under a rule that only graduates of ABA-approved law schools may be admitted to the bar of the State of Washington through examination?

STATEMENT OF THE CASE

Petitioner Michael R. Wilson applied to take the February, 1976 Washington State bar examination. His application was rejected, since it showed on its face that he had attended a law school not approved by the American Bar Association. Under rules adopted by the Washington Supreme Court, the Board of Governors of the Washington State Bar Association (respondent) has been given the authority to designate certain law schools as "approved law schools," graduation from which is a prerequisite for one wishing to take the bar examination as a general applicant. WASH. ADMISSION TO PRACTICE RULES, Rule 2A and B. The Board of Governors has long maintained a policy of approving only those law schools which are approved by the American Bar Association, rather than instituting a nationwide accreditation program of its own, or giving ad hoc consideration to individual applications.

Mr. Wilson challenged the refusal of the Board to allow him to take the bar examination, seeking, contrary to the

rule, an individualized evaluation of his legal training and his law school. The trial court granted the respondent's motion for summary judgment, and on appeal the Supreme Court of the State of Washington affirmed, approving the policy of the Board in approving only ABA-accredited schools.

ARGUMENT

This case presents no federal question of substance. The power of the states to prescribe educational qualifications for those who practice law within their boundaries has been consistently recognized and approved by this Court. See In re Griffiths, 413 U.S. 717, 722, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973); Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154, 159-60, 91 S.Ct. 720, 27 L.Ed.2d 749 (1971); Baird v. State Bar of Arizona, 401 U.S. 1, 8, 91 S.Ct. 702, 27 L.Ed.2d 639 (1970); Spevack v. Klein, 385 U.S. 511, 523, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967); Schware v. Board of Bar Examiners, 353 U.S. 232, 239, 77 S.Ct. 752, 11 L.Ed.2d 96 (1957). The requirement that a bar applicant must have attended a law school providing a high quality of education is clearly a reasonable measure to assure the competence of applicants for admission to the bar.

One method of assuring that bar applicants have attended a law school providing a high quality of education is to require graduation from a law school approved by the American Bar Association as a prerequisite for taking the bar examination. This is what the State of

Washington has done, believing the ABA to be a reliable accrediting body, and finding the alternatives--establishment of its own accreditation procedures or individual evaluation of the law school attended by every bar applicant--to be both staggeringly burdensome and probably no better.

Many challenges have been raised to requirements such as this in other states, both in state and federal court, and each and every one of these challenges has approved the policy of adopting the ABA list. See, e.g., Moore v. South Carolina, 447 F. Supp. 527 (D.S.C. 1977), aff'd, 577 F.2d 735 (4th Cir. 1978), cert. denied, ___U.S.___, 99 S.Ct. 574, ___L.Ed.2d___ (1978); Lombardi v. Tauro, 470 F.2d 798 (1st Cir. 1972), cert. denied, 412 U.S. 919, 93 S.Ct. 2734, 37 L.Ed.2d 145 (1973); Kadans v. Collins, 441 F.2d 657 (9th Cir. 1971), appeal dismissed, 404 U.S. 1007, 92 S.Ct. 672, 30 L.Ed.2d 656 (1972); Hackin v. Lockwood, 361 F.2d 499 (9th Cir. 1966), cert. denied, 385 U.S. 960, 87 S.Ct. 396, 17 L.Ed.2d 305 (1967); Harris v. Louisiana State Supreme Court, 334 F.Supp. 1289 (E.D. La. 1971); In re Application of Hansen, ___Minn.___, ___N.W.2d___ (1978); Appeal of Murphy, ___Pa.___, 393 A.2d 369 (Pa.S.Ct. 1978); In re Stephenson, 511 P.2d 136 (Alas. 1973); In re Schatz, 80 Wash.2d 604, 497 P.2d 153 (1972); In re Eisenson, 272 So.2d 486 (Fla. 1972); In re Batten, 83 Nev. 265, 428 P.2d 195 (Nev. 1967); In re Lorring, 75 Nev. 330, 340 P.2d 589 (1959); Henington v. State Board of Bar Examiners, 60 N.M. 393, 291 P.2d 1108 (1956); State ex rel. Ralston v. Turner, 141 Neb. 556, 4

N.W.2d 302 (1942); Rosenthal v. State Bar Examining Committee, 116 Conn. 409, 165 A. 211 (1933).

As the unanimity of the above cases strongly indicates, it simply is of no constitutional import that a state may choose to use the expertise of a particular body to assist it in its proper task of assuring the quality of its attorneys.

CONCLUSION

Since the issue presented by Michael R. Wilson's petition for writ of certiorari does not present any federal question of substance, respondent Board of Governors of the Washington State Bar Association respectfully requests that the petition be denied.

DATED this 12th day of February, 1979.

Respectfully submitted,

ROBERT T. FARRELL
Counsel for respondent